Tax changes that may affect you.

Fiduciary update

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Overview

1.1 Purpose of this document

This document aims to highlight the proposed tax changes after the tabling of the following bills by the Minister of Finance in parliament with the Medium-Term Budget Policy Statement (MTBPS):

- The Taxation Laws Amendment Bill (TLAB), [B37 – 2023], (TLAB)
- The Revenue Laws Amendment Bill (Revenue Laws), [B39 – 2023]
- The Tax Administration Laws Amendment Bill (TALAB), [B37 – 2023]

On 22 December 2023 the following amendment acts were promulgated (put into effect):

- The Taxation Laws Amendment Act 17 of 2023
- The Tax Administration Laws Amendment Act 18 of 2023

The tax changes were signed into law, except for Revenue Laws.

1.2 How could these changes impact your retirement plan?

The Revenue Laws provides the necessary amendments required to implement the first phase of the two-pot retirement system and considers public comments received in response to the 2023 Draft Revenue Laws Amendment Bill published on 9 June 2023. The Revenue Laws contains the following key 2023 budget tax proposals:

- The proposed implementation date of the two-pot retirement system is 1 March 2025, however, the Revenue Laws is being debated in Parliament and it is likely that final effective date will be 1 September 2024. This provides enough time for funds to consult members about rule changes and communicate to members the impacts of their contributions.
- The once-off seed capital, which will enable a member to access a portion of the available balance in the retirement fund on 1 March 2025, is proposed to be calculated as 10% of the benefit accumulated in the 'vested component' on 28 February 2025, capped at R30 000.
- Defined benefit fund members will also participate in the two-pot retirement system.
- Some legacy retirement annuity funds will be exempt from the two-pot retirement system.

Future legislative amendments, which will enable members to access funds from the 'retirement component' if they are retrenched and have no alternative sources of income, will be considered in the second phase of the implementation of the two-pot retirement system. However, this will be coupled with measures to ensure that saving for retirement is not compromised, and to protect the liquidity of such funds at all stages.

The proposals in more detail

2.1 Retirement-related reforms

Please note that the retirement changes in this section exclude changes related to the two-pot retirement system – this will be covered in section 2.3.

Who may be affected?	What may change?	Assessment of the potential impact
Retirement funds members	**Transfers between pension or provident funds by members who are 55 years or older.** Currently, taxes may apply on an involuntary transfer from 1 pension fund or provident fund to another by a fund member who is 55 or older (or has reached normal retirement age). It is proposed that: • members of pension or provident funds who are subject to an involuntary transfer because they have reached normal retirement age, as set out in the fund rules, but have chosen to not retire from the fund yet should be able to have their retirement interest transferred from a less to a more restrictive retirement fund without incurring a tax liability; and • thereafter, the value of the retirement interest, including any growth, will remain separated and preserved in the receiving pension or provident fund until the member elects to retire from that fund.	The allowance of tax-free transfers of retirement funds is a welcome and positive amendment. The amendment is effective from 1 March 2024 and applies to years of assessment starting on and after that date.

2.2 Other income tax changes

Who may be affected?	What may change?	Assessment of the potential impact
Long-term investors in financial instruments	**Practice Note 31 of 1994 – applicable for years of assessment starting before 1 January 2025** • Practice Note 31 (PN 31) currently allows a deduction of certain expenses against interest income, such as **interest paid, trustee fees** and **portfolio fees**, for long-term investors who are not carrying on a trade, ie investors who are not speculating in financial instruments to make a profit. • In November 2022 SARS announced its intention to withdraw PN 31. Click here for more information on PN 31. **Legislation replacing PN 31 – applicable for years of assessment starting on or after 1 January 2025** • The proposed legislation replacing PN 31 will allow a person to deduct **interest incurred:** - in the production of interest income that is included in the income of that person for tax purposes; - not in carrying on a trade; and - that does not exceed the interest income received or accrued, which is included in the income of that person for tax purposes. • A person **will not** be allowed to deduct other expenses such as **trustee fees** and **portfolio fees**. • The legislation replacing PN 31 will come into operation on 1 January 2025 and applies to years of assessment starting on or after this date.	The legislation replacing PN 31 will be detrimental, as a deduction will now be limited to interest incurred on back-to-back loans.

Non-resident beneficiaries of trusts	**Taxation of non-resident beneficiaries of trusts** • Capital gains made by the South African tax resident trust will not flow through to non-resident trust beneficiaries and are taxed in the South African trust. • Income accruing to the South African resident trust can, however, be vested and may flow through to non-resident beneficiaries. Therefore, income can be taxed in the hands of the non-resident beneficiary, if applicable. • The proposed legislation will not allow income accruing to a South African tax resident trust to flow through to non-resident trust beneficiaries. Such income will be taxed in the trust.	The proposed legislation is detrimental to non-resident beneficiaries of South African trusts as trust tax rates are usually higher. Additionally, double taxation agreements will not apply. The proposed legislation will be effective on 1 March 2024 and applies to years of assessment commencing on or after that date.
South African resident lenders to non-resident trusts	**Anti-avoidance rules for low-interest or interest-free loans in foreign currency to trusts.** • These rules deem any interest foregone in low-interest or interest-free loans, advances or credit (sometimes denominated in foreign currency, ie Swiss franc) to a trust to be a donation subject to a donations tax. • Where such loans are denominated in foreign currency, interest forgone is calculated using an official interest rate equal to the equivalent of South African repurchase rate applicable in that currency plus 1%, ie where a loan is denominated in Swiss franc, the official interest rate will be the Swiss National Bank rate plus 1%. • The proposed legislation will require the calculated interest foregone to be translated into rands using an average exchange rate, ie of Swiss francs to rands.	The proposed legislation is detrimental, since the lender will no longer be able to use spot rate to translate the calculated interest foregone. The proposed legislation will be effective from 1 January 2024 and will apply to years of assessment commencing on or after that date.

Persons emigrating	**Apportioning tax-free investment contributions and retirement contributions.** • When an individual has ceased to be a South African tax resident, their tax year ends the day before their residency ends. The next year of assessment will start on the day their tax residency has ceased. • This means that the individual has 2 years of assessment within 12 months. As such, they may be able to double-up on certain exemptions or exclusions as allowed per assessment year. • If a person's tax year is less than 12 months, the proposed legislation restricts tax-free investments to R36 000 total for any period within the 12 months from March to February of the next calendar year. Additionally, the proposed legislation limits the aggregate of amounts of contributions to retirement funds that are allowed as deductions to R350 000. • The following example illustrates the application of the **tax-free investment apportionment**: - Mr Bheki Baloyi has ceased to be a South African resident on 1 September 2024. He contributed R36 000 to a Nedgroup Investments tax-free investment on 1 June 2024. - 1 March 2024 to 31 August 2024 year of assessment: Mr Baloyi is entitled to invest up to R36 000 in a tax-free investment without penalty. - However, as Mr Baloyi has ceased to be resident after the proposed changes, he would not be entitled to invest a further R36 000 during the assessment year of 1 September 2024 to 28 February 2025 (ie the 2nd year of assessment), since he has been limited in aggregate to an amount of R36 000. • The following example illustrates the application of the **retirement contribution apportionment:** Mr Bheki Baloyi has ceased to be a South African resident on 1 September 2024. He contributed R180 000 to his retirement annuity fund on 1 June 2024 and contributed R100 000 on 15 January 2025. Mr Baloyi's years of assessments are: - 1 March 2024 to 31 August 2024 (first year of assessment); and - 1 September 2024 to 28 February 2025 (second year of assessment). • The aggregate contribution for both years within the 12-month period amounts to R280 000, which is less than the R350 000 limit. Therefore, Mr Baloyi must be allowed to deduct the full amounts.	The proposed legislation will be effective from 1 March 2024 and applies to years of assessment commencing on or after that date.

South African shareholders of controlled foreign companies	**Clarifying the foreign business establishment exemption for controlled foreign companies.** • Controlled foreign company (CFC) provisions are income-deferral anti-avoidance provisions contained in section 9D of the Act. • These provisions apply to a South African shareholder who holds more than 50% in a foreign company and owns at least 10% equity shares or voting rights. • The shareholder is taxed on a proportional amount of income that would have been taxable had the CFC been a South African resident taxpayer. This is done according to the shareholding of the South African shareholder in a CFC. • A South African shareholder is granted an exemption from this tax if the CFC has a foreign business establishment (FBE) in the country where the CFC was established or the CFC outsources primary operations to another group company with an FBE. • An FBE is a fixed place of business located outside South Africa solely or mainly for a purpose other than tax avoidance and the business: - is conducted through offices or other structures; - is suitably staffed with on-site managerial and operational employees to conduct its primary operations; and - is suitably equipped for conducting its primary operations; - has suitable facilities for conducting its primary operations. • *CSARS v Coronation Investment Management SA (Pty) Ltd (1269/2021)* [2023] ZASCA 10 (7 February 2023) deals with the interpretation of an FBE, mainly concerning outsourcing primary operations. • Government is concerned that some taxpayers are outsourcing other primary operations by being compensated for these functions. • The initial proposed amendment was aimed to clarify the legislative position: to qualify for an FBE exemption, the CFC or another company in the same group of companies must perform all important functions for which a CFC is compensated. • The proposed amendment is withdrawn, pending Constitutional Court judgment in the appeal of *CSARS v Coronation Investment Management SA (Pty) Ltd.*	The withdrawal of the initial proposed amendment, pending the Constitutional Court judgment in the appeal of CSARS *v Coronation Investment Management SA (Pty) Ltd,* is welcomed.

2.3 Retirement-related reforms – two-pot retirement system

Please note that the 2023 Revenue Laws Amendment Bill has already been tabled to parliament but will only be effective from 1 March 2025.

Who may be affected?	What may change?	Assessment of the potential impact
South African households in distress – to help them access savings but also encourage preservation of savings	**The introduction of a two-pot retirement system.** The 2021 MTBPS proposes that measures be introduced through a two-pot retirement system to: • boost household savings by increasing preservation before retirement; and • increase flexibility through partial access to retirement funds be introduced through a two-pot retirement system. The retirement system effectively splits members' overall benefits into two pots (referred to as components), namely: • one-third of the contributions plus growth, ie a **savings component**; and • two-thirds of the contributions plus growth ie a **retirement component**. Members would be able to access contributions to the savings component while contributions to the retirement component would be saved until annuitisation on retirement. The Revenue Laws further proposes that existing retirement contributions plus growth will be valued a day before the implementation date and be designated as a vested component. Members of the retirement funds will keep their existing rights to the vested component, including the ability to withdraw a lump sum on resignation or retrenchment. Please note that retirement annuity (RA) members will not be able to withdraw a lump sum from the vested component. The proposed implementation date of the two-pot retirement system is 1 March 2025. This provides sufficient time for funds to consult members about rule changes and the impacts on members' contributions.	The two-pot retirement system will certainly be welcomed by all retirement fund members who experience financial strain during challenging times, for example the Covid-19 lockdown. Some members who are currently experiencing financial hardship will be disappointed with the implementation date of 1 March 2025 seemingly being too distant.

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Members who are in financial distress	**Access to retirement savings** A once-off amount of 10% of the vested component at 28 February 2025, limited to R30 000, will be allocated to the savings component (to seed the savings pot) on or after 1 March 2025 to enable immediate access to funds in the savings pot in case of emergencies.	The seeding of the savings component offers welcome relief for members in distress, as funds will be immediately available in the savings component on 1 March 2025.
Members contributing for retirement	Allocation of contributions Contributions to a pension fund, provident fund, or retirement annuity fund by or on behalf of that member on or after 1 March 2025 will be allocated as follows: • two-thirds of the total retirement contributions to the retirement component; and • one-third of the total retirement contributions to the savings component.	
Members withdrawing funds from the savings component	Withdrawal from the fund It is proposed that funds could be withdrawn from the savings component of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, under the following conditions: • One withdrawal during a year of assessment. • Members with multiple contracts in the same fund will be limited to 1 withdrawal during a year of assessment from each of the contracts. • A withdrawal must be at least R2 000. • The withdrawal will be charged withholding tax or PAYE at a fixed tax rate, according to the South African Revenue Services (SARS) directive, when paid by the fund. • The withdrawal will be taxed according to individual marginal tax rates on assessment (ie per normal income tax tables) and not according to withdrawal retirement tax tables.	Members taxed at a higher income tax rate will be worse off, since normal tax tables are punitive compared to the withdrawal tax table. A SARS directive will simplify the withholding tax for fund administrators and members.

Members emigrating	Access to savings after emigration Members who have emigrated will not be subject to an uninterrupted waiting period of 3 years before they can withdraw from the savings component. These members can withdraw at least R2 000 once per year of assessment. Therefore, if a member who emigrates has already made a withdrawal, they will have to wait for the next year of assessment and this withdrawal will be added to taxable income and be subject to tax in the hands of the individual at the normal income tax tables. The savings component remains accessible to members upon their exit and during the subsequent 3 years and taxed at marginal tax rates as gross income (subject to treaty provisions) similar to any other withdrawal from the savings component.	This is beneficial to emigrating members, as they will have access to funds in the savings component.
	Withdrawal from the retirement component will be subject to an uninterrupted 3 years' waiting period after cessation of South African tax residency and will be taxable according to withdrawal tax tables.	This will negatively impact emigrating members.
	If you have a **vested component** made up of: • a pension preservation or a provident preservation fund and have not exercised your right to a withdrawal, you will remain eligible to do so, and will be taxed according to the relevant lump sum tax table; • an occupational fund (pension fund or provident fund) and are entitled to a withdrawal upon resignation or retrenchment, you will remain eligible to do so on emigration and will be taxed according to the relevant lump sum tax table; or • a provident or pension preservation fund from which you have made a withdrawal before (ie the fund is now 'restricted'), or a retirement annuity fund you must be a non-resident for at least 3 years uninterruptedly before you can access your retirement savings. In the case of a retirement annuity or a 'restricted' provident or pension preservation fund (ie 1 withdrawal has already taken place), you will also have to prove (at the time of retirement or withdrawal) that you have been a tax non-resident for an uninterrupted period of 3 years (eg by providing proof of tax residency in another jurisdiction).	The existing restrictions affecting the vested component will continue to negatively impact those who have ceased to be South African tax residents.

<table>
<tr><td>Retiring members</td><td>Allocation of funds after retirement
On retirement, the member has the following 3 options (standalone or in combination) for any amounts remaining in the savings component:
• Make a withdrawal from the savings component. This will be taxed according to the table applicable to retirement fund lump sum benefits.
• Transfer any portion or the full amount to the retirement component. This will be annuitised and attract normal tax on payout.
• Withdraw from an amount remaining from the savings component after retirement, and having exercised the options above, as the need arise. Such withdrawals will be included in gross income and be taxed at marginal tax rates.

Evaluating the de minimis value, which can trigger an automatic commutation on retirement (R165 000), is a separate calculation and includes the member's interest in the retirement component plus one-third or less of the member's interest in the vested component. The savings component is irrelevant for this calculation.</td><td>The availability of the savings component after retirement is beneficial, as it will continue to provide retired members access to funds other than in the form of annuities.</td></tr>
<tr><td>Retirement fund managers, trustees or regulators: investment strategy</td><td>Regulation 28 to the Pension Funds Act (PFA), 24 of 1965, sets the broad limits per asset class for retirement funds, except for certain living annuity contracts. The asset class limits, are applicable at a fund level, which will not be impacted by the two-pot retirement system.

However, the prudent portfolio management principles take account of risk and liquidity perspectives, given the expected time horizon of the investments and member behaviours in the light of withdrawal flexibility presented by the savings component.</td><td>This is beneficial, as the introduction of the two-pot retirement system will not result in additional limits.</td></tr>
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Members who are retrenched or have resigned from their jobs	**The following options are available if members want to withdraw after retrenchment or resignation:** • The **vested component:** A member is entitled to 1 withdrawal from a pension fund, provident fund, pension fund preservation and provident fund preservation. • The **savings component:** A member is entitled to 1 withdrawal each year of assessment until this pot is depleted. • The **retirement component**: A member will not be entitled to withdrawals from this component. Future legislative amendments enabling a member to access funds from this component, if a member is retrenched and has no alternative source of income, will be considered in the 2nd phase of implementation of the two-pot retirement system. However, this will be coupled with measures to ensure that saving for retirement is not compromised, and to protect the liquidity of such funds at all stages.	This is beneficial for members as it balances the long-term retirement savings objectives and the immediate needs of members requiring funds.
Provident fund members who were 55 or older on 1 March 2021	The following is proposed for members who were 55 years or older on 1 March 2021: • If such a member has elected to continue contributing to a vested component (default option) on or after 1 March 2025, the member may not be allowed to make contributions to the savings component or the retirement component. All (100%) of the contributions are made to the vested component, provided that the member remains in the same fund as pre-1 March 2021. In this case the vested component is an accumulation of all vested* and non-vested rights** earned before the two-pot retirement system implementation date and contributions from 1 March 2025 onwards. • Where a member elects to participate in the two-pot retirement system, no contribution to the vested component will be allowed after 1 March 2025. Accordingly, contributions from 1 March 2025 will be made to the savings component and retirement component. * Vested rights — pre-1 March 2021 contributions plus growth. ** Non-vested rights — post 1 March 2021 contributions plus growth up to 28 February 2025 or the implementation date.	This is beneficial for affected members as they can choose according to their circumstances.
Members who transfer within the same fund (intra-fund transfers)	Intra-fund transfers A member will be allowed to transfer available funds tax-free from: • the savings component to a retirement component; or • the vested component to a retirement component. **NB:** A tax directive must be obtained. No transfer will be allowed from a retirement component to a savings component or vested component.	This will positively impact long-term retirement fund preservation.

Members who transfer to a different fund (inter-fund transfers)	Inter-fund transfers On resignation or retirement, a member will be allowed to transfer available funds tax-free to another fund: • from the saving component of the transferor fund to the saving component of the transferee fund; • from the saving component of the transferor fund to the retirement component of the transferee fund; • from the vested component of the transferor fund to the vested component of the transferee fund; • from the vested component of the transferor fund to the retirement component of the transferee fund; and • from the retirement component of the transferor fund to the retirement component of the transferee fund. **NB:** Inter-fund transfer only takes place if all components are transferred to the transferee fund. A tax directive must be obtained.	Tax-free transfers are welcomed.
Members with divorce orders, maintenance orders, employer loans or housing loans, ie deductions in line with section 37D of the PFA	Deductions in terms of section 37D of the PFA proportionally reduce member's interest across all components, ie the savings component, retirement component, and vested component.	This is beneficial for affected members as they can choose according to their circumstances.
Members who transfer within the same fund (intra-fund transfers)	**The options after member's death, retirement, or disability will be the following:** • A lump sum payout from the savings component that will be taxable as a retirement lump sum, subject to the retirement lump sum tables. • Savings withdrawal benefits, which will be taxed at marginal rates. • A transfer of the savings component to the retirement component. • A combination of the above.	This will benefit members and/or beneficiaries, because they can make choices based on their circumstances.
Members of defined-benefit funds, including the Government Employee Pension Fund (GEPF)	**The two-pot retirement system will also apply to defined-benefit funds. Contributions will be dealt with as follows:** • The total value attributed to the savings component on or after 1 March 2025 will be determined with reference to one-third **of the member's 'pensionable** service' as contemplated in the rules of that fund on or after 1 March 2025. • A fund that is unable to allocate contributions as stated above may allocate contributions utilising **a reasonable method of allocation as approved by the Financial Sector Conduct Authority.**	This is beneficial for defined-benefit members as they will also have access to emergency funds.

Members of existing RAs	The requirements for RA contributions The proposed legislation affects all retirement funds, including existing RAs. RA contributions on or after 1 March 2025 will have to allocate one-third to the savings component. However, some legacy RAs will be exempted from the two-pot retirement system because of existing RA terms and conditions. The legislation proposes that '**legacy' RA** products be exempted from participating in the two-pot retirement system, provided that the following requirements are met: • The policy was entered into before 1 March 2025. • The policy has a pre-universal life or universal life construct. • The policy is subject to conditions that the Financial Sector Conduct Authority determines.	Members of **legacy RAs** will be affected negatively, since, if the exemption is approved, they will not have access to emergency funds.

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